

Message

From: Mutter, Andrew [mutter.andrew@epa.gov]
Sent: 11/9/2018 7:38:39 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: FW: Compilation 11/9/18

From: Agarwal, Ilena
Sent: Friday, November 9, 2018 12:38:32 PM (UTC-07:00) Mountain Time (US & Canada)
To: AO OPA OMR CLIPS
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The Atlantic: Trump's Interference With Science Is Unprecedented

Experts say that key EPA proposals would meddle with the research process and endanger decades of protective health rules.

<https://www.theatlantic.com/science/archive/2018/11/experts-warn-trump-epa-meddling-scientific-method/575377/>

ROBINSON MEYER- November 9, 2018

The Trump administration is breaking with 75 years of precedent by attempting to interfere in how science is practiced by the U.S. government, according to three experts who issued a dire warning to their profession in the journal *Science* on Thursday. The administration is empowering political staff to meddle with the scientific process by pushing through reforms disguised to look as though they boost transparency and integrity, the experts say.

"It is tempting to conclude that recent proposals for reforming regulatory science are similar to what has occurred in the past," they write. "They are not."

"People who are not scientists are telling us how scientific synthesis and analysis should be done," says Wendy Wagner, a professor of law at the University of Texas at Austin and one of the authors of the paper. "We're not even getting scientists' best work. We're tying scientists' hands behind their back and not even giving them a shot."

"It's a very dangerous place for science and public policy," she told me. "Politics has gone to a place that should be off limits, and no one is noticing and calling them on that fact."

The experts' warning may prove particularly damaging to the reforms' success. One of the Trump reforms that most worries Wagner claims to be inspired by a 2009 study from the Bipartisan Policy Center and a 2013 report by the Administrative Conference of the United States. A statement from the Environmental Protection Agency also cited both of those studies for authority.

In Thursday's edition of *Nature*, her warning was co-authored with Liz Fisher, a professor of environmental law at Oxford; and Pasky Pascual, a recently retired data scientist and lawyer for the EPA.

The experts are most critical of a so-called scientific-transparency rule first proposed by Scott Pruitt, the former administrator of the EPA. As I wrote in July, the rule would effectively bar the agency from using public-health research—or any other research that relies on private medical records—when issuing rules to limit water pollution, air pollution, or the use of toxic chemicals. Though Pruitt has resigned, the proposal remains on track to become official EPA policy.

The Pruitt proposal "applies retroactively," Wagner told me, meaning it would force the EPA to revise—and possibly weaken—nearly every rule protecting human health from air, water, or chemical pollution issued in the agency's 48-year history.

Read: Even geologists hate the EPA's new science rule.

That proposal has been condemned by nearly 70 scientific and public-health professional organizations, as well as by Harvard, the Association of Public and Land-Grant Universities, and the editors of *Science*, *Nature*, and *Proceedings of the National Academy of Sciences*.

The experts also criticize an EPA directive issued by Pruitt in 2017 that remains in effect. That memo barred any university scientist who has received a research grant from the EPA from serving on an EPA scientific-advisory board or

acting as a peer reviewer of EPA regulatory analysis. Notably, it did not put industry scientists under the same restrictions, even if they are employed by a company that could be financially hurt by EPA regulation.

Since the rule was issued, “at least a few respected scientists have been removed from EPA science-advisory boards because they were not willing to abandon their EPA-funded research,” the authors write. “To our knowledge, there is no precedent for such a unilateral exclusion of federal grantees as peer reviewers” in either federal law or academic practice, they add.

The experts also criticize the honest Act and the EPA Science Advisory Board Reform Act, a pair of bills that would constrain the EPA similarly to the proposals above. Both bills passed the House of Representatives last year but seem unlikely to become federal law during this Congress.

Why are all these reforms so unprecedented? According to the authors, each of them places some stage of the scientific process under political direction. For decades, they write, the EPA and other federal agencies have followed a “two-step process” when consulting science: First, scientific staff have reviewed existing research and summarized and synthesized it for political staff. Then that political staff “can accept, ignore, rerun some of the analysis, or reinterpret the results.”

This process essentially erects an apolitical wall between the agency’s scientific staff and its policy makers, and it has been endorsed by the U.S. National Academy of Science, the authors say. But every single one of the proposed EPA reforms breaches that wall, allowing political staff to dictate the terms of scientific analysis and synthesis to scientists.

“It’s extremely problematic to start to limit what the scientific analysis can actually do within the agency. It cuts into the science, a place we’ve never been before,” Wagner told me.

“Of course, science has been under siege in the agencies for decades,” Wagner said. “But it’s never gotten to the point where we’re actually altering the rules to limit the review of the scientific literature.” Since political appointees can issue exemptions to the new policies, they could essentially pick and choose what research scientists are allowed to even consider for synthesis, she said. “So we’ll now be painting a partial picture, and a lopsided picture.”

Read: The GOP just lost its most important climate moderates.

In the paper, the experts provide a short summary of the use of science in government, demonstrating why the Trump interference is so unprecedented. Wagner told me that the best comparison to the new proposals is an erroneous effort by the Indiana state legislature at the end of the 19th century to establish the value of pi as 3.2: “It’s politics going to a place that should be off-limits. They’re in a place that it shouldn’t be.”

The proposed rules also use terms of great scientific consequence—including replication and transparency—but fail to define their meaning, the experts say. This could allow federal courts to redefine the terms in ways not conducive to the best interests of science.

Above all, Wagner said she hoped that the broader community of research scientists and technical experts would sit up and pay attention to the EPA proposals and House bills. Many researchers seem to believe that the rules set up surmountable obstacles, she said, when they may actually endanger entire swaths of regulation. If the “transparency” proposal becomes law, it would apply to every other EPA rule, Wagner said. Courts could toss out entire agency regulations if the underlying research fails to meet the new, politically informed standard. “These are mandatory,” she said.

Even if the proposals don’t become law, they point to a depressing “new era” in the federal wars over science, the experts write. As Wagner told me, “What worries us is that we’ve gotten to this point—that this is even on the table.”

Chicago Tribune: EPA cites company for high levels of toxic lead in air near already contaminated Hammond, Whiting neighborhoods

<http://www.chicagotribune.com/news/local/breaking/ct-met-epa-indiana-whiting-metals-lead-pollution-20181108-story.html>

By Michael Hawthorne • November 9, 2018, 5:00 AM

As the U.S. Environmental Protection Agency digs lead-contaminated soil out of dozens of yards in Hammond and Whiting, authorities recently discovered the northwest Indiana cities are being polluted again by a factory releasing alarming concentrations of the brain-damaging metal into the air.

Citing three months of air quality testing near Whiting Metals, the EPA and the Indiana Department of Environmental Management accused the company on Thursday of repeatedly violating federal health standards.

Monitors installed just north of the company's facility at 2230 Indianapolis Blvd. found that average lead levels in the air between August and October were more than twice the legal limit of 0.15 parts per billion. On several days when winds blew pollution from the factory toward the monitoring equipment, lead concentrations spiked up to 1,200 times higher.

The crackdown on Whiting Metals comes less than a year after Indiana officials renewed the company's air pollution permit, despite objections from neighbors and the former regional director of the state's environmental agency. Company officials could not be immediately reached for comment.

At the same time Indiana gave the company permission to emit more lead into the air, federal officials were discovering that surrounding neighborhoods already were contaminated with high levels of the toxic metal deposited by the original occupant of the Whiting Metals site.

Soil samples collected by the EPA during late 2017 identified more than two dozen contaminated yards in Hammond and Whiting. The agency has since excavated tainted soil from 25 properties where lead levels were at least three times the federal limit.

Results are still being analyzed for another 229 properties sampled after the federal agency held a public forum in May.

EPA scientists traced the contamination to Federated Metals, a smelter that operated at the Indianapolis Boulevard site from 1937 to 1983. The history of Federated Metals appears to have been all but forgotten until 2016, when career employees at the EPA's Chicago office began digging through files on polluted sites in northwest Indiana that either haven't been cleaned up or weren't scoured thoroughly enough years ago.

While federal and state officials oversaw a cleanup of the Federated Metals site during the 1980s, they did not test surrounding neighborhoods. The situation is eerily similar to the lead-contamination crisis still unfolding in nearby East Chicago, where authorities failed for decades to test residential areas near other smelters that were abandoned long ago.

Lead is unsafe at any level, according to the EPA and the U.S. Centers for Disease Control and Prevention. Ingesting tiny concentrations can permanently damage the developing brains of children and contribute to heart disease, kidney failure and other health problems later in life. In March, a peer-reviewed study estimated that more than 400,000 deaths a year in the U.S. are linked to lead exposure — or 18 percent of all deaths.

David Dabertin, a Hammond attorney and former regional director of the Indiana environmental agency, confronted Gov. Eric Holcomb in April and asked why federal and state officials have allowed other lead-processing companies to operate on the Federated Metals site in Whiting.

“You are telling these people there is lead in their backyard, but (the state environmental agency) just permitted that facility to produce lead,” Dabertin says to Holcomb in a Facebook video. “That’s a disconnect.”

Holcomb nodded toward Whiting Metals and promised Dabertin he would look into the matter. Four months later, air monitors went up next to the site.

Fox: EPA has questions about spray foam insulation and air quality

<http://www.fox5atlanta.com/news/i-team/epa-has-questions-about-spray-foam-insulation-and-air-quality>

By: Dana Fowle- POSTED: NOV 09 2018 11:14AM EST

DORAVILLE, Ga. - A big trend in construction these days is to use spray foam as insulation, replacing the traditional fiberglass kind. But, it's not without controversy and potential risks. Here's a peek at my continuing investigation into a product that some homeowners say can hide problems that is destroying homes.

Spray foam insulation is put into homes - in attics and basements and sometimes in the interior of the walls - to help manage utility bills. And it really works. It can really cut heating and air costs. But, at what cost?

In part one of our look into spray foam insulation, we showed you multiple homes infested with termites. One homeowner alleges in a lawsuit that termites got in behind the spray foam insulation and hid the fact that they were foraging through the foam, spreading throughout the home and causing more damage than they otherwise would. But there's more to this story and to our Fox 5 I-Team investigation.

Homeowners complain their spray foam insulation hid termites.

R.S. Andrews, one of the largest heating and air companies in our area, has seen spray foam used as insulation turn minor refrigerator leaks into major renovation jobs, because, they tell us, the leak was hidden until it became too big to ignore. The company, we're told, gets requests to install it all of the time, but management says they won't do it. Not yet anyway. And for reasons beyond potential home damage.

"As a company we're not ready to put this product in the home yet until there's more studies done health-wise and our clients will be safe having it," said manager Andrew Navarro.

Their concerns marry those of the EPA. Join me Monday morning at 7 a.m. on Good Day Atlanta for the full story on this very popular product.

E&E News: Will Trump's rollback survive in court?

<https://www.eenews.net/climatewire/stories/1060105777/search?keyword=epa>

Maxine Joselow- Friday, November 9, 2018

Now that the Trump administration has stopped taking public comments on its rollback of Obama-era clean car rules, critics are obsessing over one question.

Will it survive in court?

EPA and the National Highway Traffic Safety Administration stopped soliciting public comments on their proposed rule last week. The proposal calls for freezing fuel economy requirements at 2020 levels through 2026 and revoking California's ability to set tougher tailpipe emissions standards.

Critics say the proposal is riddled with technical errors and flawed assumptions. If the Trump administration keeps those mistakes in the final rule, they say, it will have a hard time defending it in court.

"I would say that the flaws in this [rollback] are deep and profound and many," said Sean Donahue, counsel for the Environmental Defense Fund, on a call with reporters last week. "I think that creates a lot of legal problems."

The Trump administration hopes to finalize the rule by the end of 2019. At that point, Democratic attorneys general and environmental groups would be sure to file lawsuits challenging its legality.

California Attorney General Xavier Becerra (D) announced plans this summer to lead 19 other attorneys general in a lawsuit against the Trump administration over the car rules rollback (Greenwire, Aug. 2).

Leading national green groups such as the Natural Resources Defense Council and the Environmental Defense Fund are also ready to go to bat for the Obama-era clean car rules. They filed a pre-emptive lawsuit in May, as did the Democratic attorneys general (E&E News PM, May 15; E&E News PM, May 1).

The challenges from blue states and green groups would probably be heard in the U.S. District Court for the District of Columbia. But they could reach the Supreme Court, where newly installed Justice Brett Kavanaugh is a big question mark.

The car rules were one of President Obama's signature initiatives for combating climate change. While his Clean Power Plan targeted power plants, the car rules targeted the transportation sector, which recently eclipsed the power sector as the country's largest source of greenhouse gas emissions.

Here's a preview of the legal arguments that could be used in court to defend the Obama-era rules:

'Classic arbitrary and capricious'

Plaintiffs would likely argue that the Trump administration's proposal is "arbitrary and capricious" under the Administrative Procedure Act.

Pat Parenteau, an environmental law professor teaching this fall at Ireland's University College Cork, said his first thought when reviewing the proposal was: "This is classic arbitrary and capricious."

To justify their view, plaintiffs would point to a number of perceived flaws with the Trump administration's modeling and technical analysis.

In particular, the Trump administration claims that the proposal would prevent 12,700 traffic deaths annually. But critics say a careful look at the administration's math reveals significant errors and flawed assumptions.

Unpacking those assumptions is complicated. They're related to something called the "scrapage model" — a projection of when consumers will "scrap" an older vehicle in favor of a newer model.

The Trump administration's reasoning went like this: Weakening the car rules would lower the cost of a new car. That would encourage people to buy new cars and scrap their older vehicles, resulting in less driving and fewer traffic accidents overall.

But critics say that reasoning was flawed. They say research shows that people who bought new cars would likely still keep their older models and drive them occasionally. That would result in more driving and more accidents on the nation's roads.

Two researchers whose work on the scrapage model was cited in the proposal have even said their findings were misinterpreted.

"All the evidence and economic logic points to a larger total vehicle fleet under a rollback, at odds with NHTSA's fleet turnover model," wrote Mark Jacobsen of the University of California, San Diego, and Arthur van Benthem of the University of Pennsylvania in regulatory comments. "This error alone would significantly change the benefit-cost analysis in the proposed rollback."

The Trump administration also misunderstood something called the "rebound effect," critics say. It's the idea that under existing fuel economy standards, driving is less expensive, and thus people drive more.

When setting the Obama-era car standards, EPA and NHTSA estimated that the rebound effect was around 10 percent. But when crafting its proposal to roll back the standards, the Trump administration asserted that the rebound effect is closer to 20 percent.

That's a glaring error, said Julia Stein, an attorney at the Emmett Institute on Climate Change and the Environment at UCLA School of Law. And it accounts for about half of the estimated prevented traffic deaths, she said.

"The agency is now estimating a 20 percent rebound effect with basically no justification," Stein said. "It actually accounts for about half of the avoided traffic fatalities in the rule. So it's a pretty big assumption to get wrong."

Revoking Calif.'s waiver is illegal

Plaintiffs would also take issue with the Trump administration's proposal to revoke California's Clean Air Act waiver for greenhouse gases.

Under Section 209 of the Clean Air Act, California has the authority to set tougher greenhouse gas emissions standards for vehicles than the federal government. Congress handed the Golden State that authority in the 1970s due to its unique air pollution problems and smoggy skies.

Under Section 177 of the Clean Air Act, other states can choose to adopt California's tougher rules. Thirteen states and the District of Columbia have done so, representing about 40 percent of all new cars sold in the United States. Colorado is set to soon become the 14th.

But the Trump administration is proposing to revoke California's waiver that was granted five years ago. That's never been done before.

EPA under the George W. Bush administration did deny California a waiver in 2008, and California challenged the decision in the D.C. Circuit. But the case was never litigated. And when the Obama administration took office, it promptly restored the waiver for model years 2009 through 2016.

Richard Revesz, director of the Institute for Policy Integrity at New York University, said plaintiffs would likely employ a two-pronged argument to defend the waiver from the Trump administration's attack.

First, plaintiffs would argue that California and other states have relied on the waiver to meet federal air quality standards and their own air quality goals.

"California has a very strong reliance interest in keeping the waiver because otherwise it can't actually carry out its environmental policy," Revesz said. "And part of that involves compliance with federal standards."

He added, "So California's reliance interest is very strong and provides a very strong legal argument against revoking the waiver. This would be true if California were just a private company, but the argument is much stronger because California is a sovereign state, and as such, it deserves a certain degree of respect from the federal government."

Second, plaintiffs would argue that revoking California's waiver would create serious federalism concerns.

Courts have long recognized the principle of cooperative federalism, in which state and federal regulators work collaboratively without "one-size-fits-all" mandates from Washington. And when it comes to the regulation of air quality, the Supreme Court in *Medtronic Inc. v. Lohr* recognized the "historic primacy of state regulation of matters of health and safety."

If plaintiffs played up the federalism concerns, their case could have a better chance of reaching the Supreme Court, Revesz said. It takes the votes of four justices for the high court to accept a case.

"It's very hard to predict whether a particular case would reach the Supreme Court," Revesz said. "It depends very much what the issue is. But the Supreme Court often grants cases involving federalism issues."

Stein said Kavanaugh might be inclined to uphold California's waiver, given his opinion in the 2010 case *American Trucking Associations v. EPA*.

The case dealt with a Section 209 waiver, and Kavanaugh wrote in the opinion: "The Clean Air Act assigns California — not any of the other states and not the federal Environmental Protection Agency — the primary role in setting limits on emissions from in-use non-road engines. ... EPA's only role is to review California's proposed rules under a narrowly defined set of statutory criteria."

EPA career staff were steamrolled

Plaintiffs would also likely point to tension between the two agencies responsible for promulgating the car rules.

EPA and NHTSA have joint jurisdiction over the car rules. It's a unique situation that can occasionally lead to tension.

In August, allegations emerged that NHTSA political appointees strong-armed EPA career staffers in their rush to finalize the proposal (Greenwire, Aug. 2).

In addition, a memo from Bill Charmley in EPA's air office shows that EPA career staffers raised numerous objections to the proposal and wanted their agency's logo removed from the document (Climatewire, Aug. 16). But their objections went unheeded, and the logo remained.

Janet McCabe, who served as acting EPA air chief under Obama, said a court would look to ensure that the agencies resolved their differences. They never did that on the clean car rules.

"I think that litigants will certainly point out these disagreements in any legal challenge," McCabe said, referring to EPA's protests. "They'll look to see how the agency responds to those comments. Agencies have to engage in rational decisionmaking. It's going to be up to the agencies to explain how they resolve these disagreements."

Parenteau, the law professor, said courts haven't looked favorably on agency career staff being overridden. He pointed to the 1997 case *Defenders of Wildlife v. Babbitt*, which dealt with the Endangered Species Act.

In that case, the U.S. District Court for the District of Columbia found that the Fish and Wildlife Service's refusal to list the Canada lynx as threatened or endangered was "arbitrary and capricious."

The court was particularly concerned that FWS overrode the objections of its own biologists, most of whom were career staffers with expertise in the field.

"It is significant that not a single biologist or Lynx expert employed by the FWS disagreed with the recommendation of the Region 6 biologists that the Lynx be listed," the court wrote.

"Superiors in an agency obviously have the authority to overrule the staff," Parenteau said. "The question is why. Did you do it because their analysis was wrong? Well, then explain why it was wrong, not just that you want to do it differently."

WBOI: EPA Allows Dicamba For Another Two Years

<http://www.wboi.org/post/epa-allows-dicamba-another-two-years#stream/0>

By REBECCA THIELE • 1 HOUR AGO

The weedkiller dicamba — which has a habit of drifting off one farmer's field and killing crops in another — will stay on the market for two more years. The Environmental Protection Agency recently re-approved its use for dicamba resistant soybean and cotton crops.

Some environmental groups argue these products shouldn't be on the market. Last year, a coalition of farmers and environmentalists filed a lawsuit against the EPA for approving the weedkiller.

But Scott says the EPA needs to do more research to find what's to blame for these drift issues.

"Did the applicator follow everything he was supposed to follow? And if the answer's no, then you sort of put that on the back of the applicator," he says. "If the answer's yes, they did everything they were supposed to, then it seems like its a problem with the product."

Scott says, for multiple reasons, it can be difficult for the OISC to find the cause of the drift in its investigations.

With this recent approval comes even more rules on how to use dicamba herbicides. Just last year the EPA put additional restrictions on dicamba, but there's some evidence to suggest those didn't work. The Office of the Indiana State Chemist received more dicamba drift complaints this year than in 2017. The weedkiller was also responsible for the majority of pesticide drift complaints overall.

Though it's still reviewing the new dicamba product labels, Pesticide Administrator David Scott says these new restrictions don't seem drastically different and many things were left unaddressed.

"Things like reference to no application when the wind is blowing to an adjacent or neighboring crop. We still don't have a federal definition of what neighboring and adjacent is," he says.

That leaves farmers wondering how far away they would have to be from a nearby field to spray dicamba. Scott says the OISC would like to see that distance be no closer than half a mile downwind.

Scott says a work group led by the Indiana Pesticide Review Board plans to look at the science behind one the effectiveness of one new restriction in particular, which prohibits spraying dicamba on soybeans until 45 days after planting.

The Tribune: Weld, other Front Range counties failing to meet EPA ozone standards; tougher regulations potentially in store

<https://www.greeleytribune.com/news/weld-other-front-range-counties-failing-to-meet-epa-ozone-standards-tougher-regulations-potentially-in-store/>

Joe Moylan- November 9, 2018

Emissions from vehicles are the second largest contributor, behind the oil and gas industry, to bad ozone. Last week, the Colorado Regional Air Quality Council in Denver announced a nine-region along the Front Range failed to meet air quality standards set in 2008 by the U.S. Environmental Protection Agency.

The Colorado Regional Air Quality Council in Denver announced last week a nine-county region along the Front Range failed to meet U.S. Environmental Protection Agency ozone standard, meaning stricter regulations may be in Colorado's future.

The nine-county region includes Weld, Larimer, Denver, Boulder, Adams, Douglas, Jefferson, Arapahoe and Broomfield counties. The EPA had given the Denver metro and northern Front Range regions until July 20 to bring ozone levels to within 75 parts per billion, a standard set in 2008.

The 75 parts per billion requirement is averaged over an eight-hour span. The region isn't yet required to meet the most recent ozone standard 70 parts per billion, which was set in 2015.

There are two types of ozone. The "good" ozone layer can be found in Earth's stratosphere, which extends upward from about six to 30 miles above the surface and protects life from the sun's harmful ultraviolet rays.

Ground level, or "bad" ozone, is not emitted directly into the air, but rather created by chemical reactions between oxides of nitrogen and volatile organic compounds in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NOx and VOCs, according to the EPA.

HOW TO REDUCE OZONE-CAUSING EMISSIONS

- Make sure vehicle is maintained.
- Comply with emissions program.
- Drive less, use public transportation, walk and ride a bike.
- Maintain lawn mower or go electric.
- Stop at the "click" when filling up at gas tank.

Mow after 5 p.m. to help prevent emissions from reacting with sunlight and turning into bad ozone.

Since the Front Range failed to meet the 75 parts per billion mark, the EPA is expected to downgrade the region to "serious nonattainment" from "moderate nonattainment." The nine-county Front Range region is one of 37 regions throughout the country not yet up to snuff on 2008 ozone standards. Those 37 regions encompass 160 counties and are home to more than 104 million Americans, according to the EPA Green Book.

The downgrade means stricter regulations are in Colorado's future, said Mike Silverstein, executive director of the Regional Air Quality Council in Denver. Appointed by the governor, members of the Regional Air Quality Council are tasked with coming up with recommendations to reduce ozone-causing emissions. It works "hand-in-glove" with the Colorado Department of Public Health and Environment, which puts those recommendations into practice and enforces them.

The Regional Air Quality Council is taking an across-the-board approach in terms of how to reduce ozone. In the past, it has installed electric vehicle charging stations throughout the region and will continue to do so in the future. It also has spent a lot of money converting diesel- and gasoline-burning garbage trucks and buses to cleaner burning fuels, such as natural gas. It's also looking at whether or not to adopt stricter standards on paint and cleaning products, which also emit NOx and VOCs into the atmosphere.

Then there are the two primary sources of ozone-causing emissions — the oil and gas industry, and fossil-fuel burning vehicles.

"The oil and gas industry is the largest source category of emissions, mainly because it's such a large industry with such a big footprint," Silverstein said. "Just like a lot of vehicles together makes up the second biggest source category."

Although it's too soon to know what new regulations might be coming down the pipeline, reducing bad ozone in the region is challenging because of factors outside of anyone's control. For example, Colorado inherits a negligible amount of its bad ozone — somewhere between one and five parts per billion — from pollution traveling here from China and California.

Weather, or more accurately a lack thereof, also plays a big role in the region's air quality problems.

HEALTH PROBLEMS FROM OZONE

- Difficult to breathe deeply and vigorously.
- Shortness of breath, and pain when taking a deep breath.
- Coughing and sore or scratchy throat.
- Inflammation and damage the airways.
- Aggravate lung diseases such as asthma, emphysema and chronic bronchitis.
- Increase the frequency of asthma attacks.
- Make the lungs more susceptible to infection.
- Continue to damage the lungs even when the symptoms have disappeared.
- Cause chronic obstructive pulmonary disease.

Cindy Shellito, professor of meteorology at the University of Northern Colorado, said during the summer high-pressure systems move into the area and can linger over the region for extended periods of time. High-pressure systems result in stagnant air, which causes those dry, warm and sunny days for which the Front Range is famous.

It's not uncommon for a high-pressure system to roll into the area and last all summer, Shellito said. But stagnant air also means nothing is moving. The bad ozone stays in the area because there is no weather to push it out.

"Sometimes that could mean waiting on a monsoonal pattern to come into the area, which doesn't generally happen until late July or August," Shellito said. "If you don't have weather, the bad ozone just sits in the region."

It's no coincidence the nine-county Front Range region experienced at least 23 ozone action days from late June to early September. But Shellito said managing bad ozone isn't just a summer time problem.

In the winter, cold air can "dam up" against the Rocky Mountains, which also traps ozone in the region until a new weather system moves into the area and pushes it out. Ozone levels can sometimes be just as high as during the summer because there are not only emissions from industries and vehicles, but also from people heating their homes.

Bringing the Front Range into 2008 EPA air quality compliance is a tall order. In order to monitor air quality, the Regional Air Quality Council and the Department of Public Health and Environment rely on data collected from 31 stations located throughout the state.

Fifteen of those stations are located along the Front Range, including one in Greeley at Weld Tower, on the north side of town not far from Island Grove Regional Park. Local levels on the worst air quality days ranged between 73 and 77 parts per billion.

The stations reporting the highest concentrations of ozone were typically closer to the foothills, including Rocky Flats, Chatfield State Park, west Fort Collins and the National Renewable Energy Laboratory near Golden. During the worst air quality days, those stations reported ozone concentrations close to 90 parts per billion, which doesn't meet 1997 EPA standards, let alone 2008 and 2015 requirement.

EHS: Enforcement Settlements: EPA Revises Policy

<https://ehsdailyadvisor.blr.com/2018/11/enforcement-settlements-epa-revises-policy/>

By William C. Schillaci Nov 9, 2018 Enforcement and Inspection

The EPA's Office of Enforcement and Compliance Assurance (OECA) has stepped away from an earlier policy that created an expectation that in settlements with violators of environmental law and regulation, Agency case teams are expected to make use of "innovative enforcement" tools. The Agency now states that while such tools have proven useful, case teams are not required to "routinely" make use of them in settlements.

EPA

Next Generation Compliance

The use of innovative enforcement tools was a highlight of the Obama EPA's Next Generation (Next Gen) Compliance initiative, which, the Agency said at the time, had the goal of increasing compliance with environmental regulations by using advances in pollutant monitoring and information technology combined with a focus on designing more effective regulations and permits to reduce pollution. The initiative emphasized the use of innovative enforcement tools, which included injunctive relief, mitigation, and Supplemental Environmental Projects. Specific measures under these headings included advanced monitoring, independent third-party verification of a settling party's compliance and settlement obligations, and electronic reporting.

In a January 2015 memo, the OECA noted that Next Gen Compliance tools have the potential to improve compliance and provide significant benefits to the EPA, the public, and the regulated community. "As such, they should be considered in all civil enforcement cases [other than expedited settlements] and incorporated in civil and administrative settlements whenever appropriate," the OECA stated.

No Default Expectation

In an April 2018 memo, the OECA withdrew the earlier memo and emphasized that "there is no default expectation that 'innovative enforcement' provisions will routinely be sought as injunctive relief where such activities are not required by the applicable statute or regulation."

The newer memo notes that injunctive relief—that is, an order to do or not do a specific action—can be applied to remedy noncompliance and/or mitigate the harm of noncompliance. But, the memo emphasizes, innovative enforcement provisions, where such activities are not required by the applicable statute or regulation, are just one of many tools available to address environmental law violations and return facilities to compliance.

"Identification of the appropriate injunctive relief to use to resolve violations and whether to seek actions not specified in the applicable statute or regulation depend on the wise exercise of enforcement and prosecutorial discretion," states the OECA. "This judgment is informed by the particular facts and circumstances of an individual case, the nature of the violations at issue, the history of noncompliance, and various other case-specific considerations."

Repeat Violators

The memo points out that injunctive relief may be appropriate in certain circumstances. For example, when faced with a repeat offender, the Agency's Office of Civil Enforcement may initially refer the matter for criminal enforcement. But if criminal enforcement is not applicable, more directive injunctive relief may be appropriate. Limiting injunctive relief tools to circumstances of this nature would considerably narrow the instances in which EPA enforcement staff would seek to make use of innovative enforcement tools. Any consideration of such tools should not be a routine matter, the OECA emphasizes.

“The extent to which any tool is appropriate and how it is included in a settlement will depend on the particular facts and circumstances of each case,” says the OECA.

MLive: EPA begins hazardous materials cleanup in Battle Creek

https://www.mlive.com/news/kalamazoo/index.ssf/2018/11/epa_begins_hazardous_materials.html

By Brad Devereaux- Updated 12:55 PM; Posted 12:54 PM

BATTLE CREEK, MI -- The U.S. Environmental Protection Agency (EPA) began removing contaminated material from the United Steel and Wire site at 27 Fonda Avenue, the agency said in a news release.

The cleanup started this week and the EPA said Nov. 7 in a news release, and anticipates that the cleanup will take several weeks and will be completed in December.

The EPA will remove and dispose of drums and bins that contain hazardous substances, including lead; decontaminate pits, floors, and structures in and around the building to remove hazardous substances; and monitor air quality.

United Steel and Wire appears to have operated in the Battle Creek area beginning in the early 1900's, the EPA said, and operated at the site through approximately 2007.

United Steel and Wire manufactured and sold plastic and metal shopping carts, displays, bins, and shelving for grocery and retail stores across the United States.

The company also manufactured seat belts, numbered signs, vertical corner bumpers, wheels, foot stools, beds, chests, tables, lockers, and ironing boards, according to the EPA.

The site went through tax foreclosure in spring of 2018, and is currently owned by Calhoun County, EPA said.

After the property foreclosed, the representatives of the county did a walkthrough and observed numerous containers of waste and other suspected hazardous materials remained on site and requested EPA's assistance on May 14, 2018.

E&E News: D.C. Circuit judges appear moved by Valero claims against EPA

<https://www.eenews.net/greenwire/stories/1060105863/search?keyword=epa>

Marc Heller- Friday, November 9, 2018

A lawyer for the Trump administration faced a flurry of questions yesterday in the latest legal challenge to the federal renewable fuel standard.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit appeared at times sympathetic to an argument by Valero Energy Corp. that EPA hasn't met a requirement for periodic reviews of the renewable fuel law's impact on refiners — and isn't giving them ample opportunity to challenge the agency's moves.

In the case, Valero Energy Corp. v. EPA, the energy company argues the agency failed to conduct the "periodic reviews" required by the RFS law, first enacted in 2005 and updated in 2007, despite a declaration in 2017 that it has been reviewing impacts in the course of implementing the program. The RFS requires the blending of ethanol into the nation's fuel supply.

In addition, Valero, one of the nation's biggest petroleum refiners, contends that the law mandates reviews of the impact on individual entities that have to comply with ethanol blending requirements, rather than broader "class level" analyses.

The company has asked the court to throw out the agency's 2017 determination and force a more formal review with a public comment period.

The case centers on finer legal points of a highly contentious program that pits oil and gas companies against the ethanol industry.

EPA, through Justice Department lawyer Ben Carlisle, countered that the agency's determination in 2017 — which wasn't published in the Federal Register — only clarified the agency's position and wasn't the sort of administrative action that would be open to a court challenge.

"Valero is in exactly the same boat it was in before EPA issued this document," Carlisle said.

A victory for Valero could open the way to further EPA reviews, which critics of the RFS say would show the ethanol mandate is hurting their industry and that mandated volumes should be lowered.

The case touches on one of several issues related to the RFS that Valero opposes. It and other refiners are looking to repeal or revamp the program through legislation, as well.

Two panelists — Judges Sri Srinivasan and Judith W. Rogers — appeared at times to struggle with the idea that Valero, or any challenger, wouldn't be able to fight such a declaration. A company might believe a proper periodic review hadn't been conducted but still had to comply with climbing ethanol volume requirements, Rogers said.

"So, if I represent Valero, what do I do?" Rogers asked Carlisle.

Valero still has the right to challenge renewable fuel volumes that EPA proposed every year, Carlisle answered. Those announcements, made through formal rulemaking, are the place to lodge objections, he said.

But EPA also has decided that refiners don't have a right to individual reviews — just the "class level" analysis the agency has said it conducts, Rogers countered.

Peppered with questions by the two judges, Carlisle acknowledged that Valero doesn't have much legal remedy if it disagrees with EPA's position that past agency actions constituted the periodic reviews required in the law.

And he said the narrow issue before the court is whether EPA's declaration changed Valero's ability to get an individual review of the RFS's impacts.

"It's always been zero, this document is zero, so it stays at zero," Srinivasan said.

Judges had questions for Valero, as well, asking a lawyer for the company, Samara Kline, to explain why the firm wouldn't be able to argue for periodic reviews in challenging the annual volume requirements, for instance.

But Rogers also appeared to be reaching for ideas about how Valero or others could force the issue legally, since EPA's 2017 decision wasn't technically a final administrative action.

In Valero's view, Kline said, EPA should have published a notice about its 2017 determination and taken public comment — but didn't in order to avert legal challenge. "This is the only opportunity we have to enforce the statute," she said.

E&E News: Wheeler signs revised EPA refinery regulations

<https://www.eenews.net/greenwire/stories/1060105901/search?keyword=epa>

Sean Reilly- Friday, November 9, 2018

EPA has approved a fresh set of changes sought by the oil industry to updated 2015 air toxics regulations for dozens of refineries.

In a final rule signed yesterday, the agency appeared to make modest tweaks to two sets of amendments unveiled, respectively, in April and July.

After proposing to delay the compliance deadline for maintenance vent standards until Jan. 30, 2019, EPA instead will have the requirement take effect 30 days after the rule's publication in the Federal Register.

The original compliance deadline had been February 2016.

After effectively granting extensions twice before, EPA now seeks to give refineries more time "to understand the amended maintenance requirements" and "to determine which maintenance compliance option best meets their needs," according to the final rule. Vents are used during plant startups, shutdowns, maintenance periods or inspections.

Similarly, the agency proceeded with a few changes to a batch of "technical corrections" proposed in April that pertain to fence-line pollution monitoring, performance testing and other issues.

In a news release, acting EPA Administrator Andrew Wheeler yesterday reiterated an earlier forecast that the changes will save the industry about \$12 million in yearly compliance costs while not increasing pollution.

In a separate release, the American Petroleum Institute hailed EPA's approval of the final rule as evidence that refineries are operating at safe emissions levels.

The agency's "practical clarification" to regulatory requirements "is a positive step that supports our shared goal of protecting public health, while enhancing investments in cleaner fuels that will reduce our environmental footprint," Howard Feldman, the trade group's senior director of regulatory scientific affairs, said in a statement.

Environmental groups said in written comments filed in May that some of the planned changes would "significantly weaken the standards, undermine compliance and enforcement and are not lawful or rational."

Their comments singled out five concerns with the proposal, including changes that they said would weaken flare requirements in the 2015 rule and add "harmful malfunction exemptions" for some pressure relief devices. In July, some of the same organizations also argued EPA had furnished no evidence of the need for another postponement of the compliance deadline with the maintenance vent standards, adding that the agency had also violated public participation requirements.

Under the Clean Air Act, the rule's publication in the Federal Register opens a 60-day window for legal challenges to be brought before the U.S. Court of Appeals for the District of Columbia Circuit.

In separate statements today, two groups said they are studying the newly amended regulations.

"We are carefully evaluating" the rule's effects on people exposed to toxic refinery pollution, Earthjustice staff attorney Emma Cheuse said. "We intend to continue holding EPA accountable to ensure the Trump Administration follows the Clean Air Act and protects public health as required by law."

At the Environmental Integrity Project, "we are concerned about any possible weakening of rules that protect refinery workers and families living downwind from oil refineries," staff engineer Ben Kunstman said.

EPA published the updated New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants in December 2015 following a legally required review.

At the time, the agency said the new regulations, applying to almost 150 refineries nationwide, would eventually cut releases of benzene and other toxic pollutants by 5,200 tons annually, while emissions of ozone-forming volatile organic compounds would drop by 50,000 tons per year.

Rule signed in Texas

Wheeler signed the final rule yesterday in concert with an unannounced visit to EPA's Region 6 office in Dallas. The trip wrapped up an initial tour of all 10 regional offices, he said in the release. While in Dallas, he met with Region 6 senior leaders and union officials and also took questions at a meeting with other employees, according to the release.

"It has been a productive and valuable experience meeting with regional staffers who are our first line of contact with local communities and critical to ensuring strong partnerships with the states," Wheeler said.

He also took the occasion to announce two other steps geared to please Texas state regulators, who were often at odds with EPA during the Obama administration.

On one front, EPA soon plans to propose reversing Obama-era nonattainment designations for the 2010 sulfur dioxide standard that currently affect five counties. Those designations, stemming from emissions from power plants that have since closed, "ignored Texas' preference for monitoring and instead relied" on Sierra Club modeling, the release said.

EPA will also move quickly to reconsider Texas' inclusion in 2015 rule that requires states to drop "affirmative defenses" and other exemptions for industrial air pollution increases that occurring during plant startups, shutdowns and malfunctions.

Lawsuits challenging the rule are on hold while EPA ponders its position.

In response to a 2017 request from the Texas Commission on Environmental Quality, Region 6 Administrator Anne Idsal last month agreed to administratively reconsider Texas' inclusion in the rule.

The public will have a chance to comment on any proposed changes, Idsal said in the letter to Jon Niermann, the commission's chairman.